

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ALLEN ZIMMERMAN, JR.,

Petitioner,

vs.

Case No. 05-70283

HONORABLE DENISE PAGE HOOD

JOHN CASON,

Respondent.

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ORDER ACCEPTING REPORT AND RECOMMENDATION

This matter is before the Court on Magistrate Judge Mona K. Majoub's Report and Recommendation dated September 8, 2006. Petitioner filed objections on September 18, 2006.

The Magistrate Judge recommended that Petitioner's Petition for Habeas Corpus be denied. The Court agrees with the Magistrate Judge's findings and conclusions of law.

The Court agrees that Petitioner failed to show that he was deprived of a fair trial by the admission of Detective Larson's testimony or that the trial court abused its discretion by qualifying him as an expert in fingerprint analysis and identification. Petitioner failed to demonstrate his counsel was ineffective by failing to object to the testimony and evidence regarding Petitioner's prior convictions, or by failing to object to and move to suppress evidence allegedly seized in violation of the Fourth Amendment. Petitioner failed to show that there was judicial misconduct during his trial, or that his sentence violates the Eighth Amendment's prohibition against cruel and

unusual punishment.¹ Petitioner likewise failed to demonstrate that the trial court abused its discretion by failing to grant Petitioner's motion for new trial based on newly discovered evidence. The Court agrees that Petitioner's claims, specifically, that he was denied due process when the prosecution withheld favorable information regarding co-defendant Smith's plea agreement and denied a fair trial because the trial court failed to make a specific fact inquiry into each declaration of co-defendant Smith, are procedurally defaulted pursuant to M.C.R. 6.508(D). Lastly, the Court agrees that Petitioner has failed to establish the requisite cause and prejudice to overcome this default.

Accordingly,

IT IS ORDERED that Magistrate Judge Mona K. Majoub's Report and Recommendation [Docket No. 38, filed September 8, 2006] is ACCEPTED and ADOPTED.

IT IS FURTHER ORDERED that Petitioner's Petition for Habeas Corpus is DENIED.

Dated: November 30, 2006

/s/ Denise Page Hood
DENISE PAGE HOOD
United States District Judge

I hereby certify that a copy of the foregoing document was served upon counsel of record on November 30, 2006, by electronic and/or ordinary mail.

S/William F. Lewis
Case Manager

¹ The comments of the judge during sentencing were harsh and in this Court's mind injected too much personal, as opposed to legal basis for imposing the sentence. (Tr. of July 9, 1999 Sentencing of Allen Zimmerman, p. 25, lns. 22-25, p. 26, ln. 1). However, such comments do not render the sentence herein unconstitutional.